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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DEC 11 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Price Cap Performance Review) CC Docket No. 94-1
for Local Exchange Carriers;)
Treatment of Video Dialtone Services)
Under Price Cap Regulation)

**OPPOSITION TO
PETITIONS FOR RECONSIDERATION**

I. INTRODUCTION

The NYNEX Telephone Companies¹ ("NYNEX") file this Opposition to the November 6, 1995, petitions for reconsideration submitted by Cox Enterprises, Inc. ("Cox") and MCI Telecommunications Corporation ("MCI") in the above-captioned matter. Those petitions were directed to the Commission's Second Report and Order ("2d R&O") released September 21, 1995, in this docket. We address issues on the de minimis threshold for removing video dialtone ("VDT") costs and revenues from sharing/low-end adjustment calculations (Point II); and VDT cost allocation (Point III).

**II. THERE IS NO BASIS FOR RECONSIDERATION OF THE VIDEO
DIALTONE THRESHOLD FOR SHARING AND LOW-END
ADJUSTMENT CALCULATIONS**

The 2d R&O has required LECs to segregate VDT costs and revenues from those for telephone service for purposes of sharing and low-end adjustment mechanisms once

¹ The NYNEX Telephone Companies are New England Telephone and Telegraph Company and New York Telephone Company.

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the LEC's provision of VDT exceeds a de minimis threshold.² Cox and MCI attack the Commission's establishment of a threshold as "totally unjustified," "totally unprecedented" and as permitting cross-subsidy of VDT by telephony.³ Their arguments are wrong and should be rejected.

Cox's and MCI's assertions in no way detract from the Commission's sound policy judgment to establish a VDT threshold which effectively balances the objectives of avoiding undue administrative burdens and ensuring that initial VDT earnings will not significantly impact overall LEC earnings which would potentially reduce sharing obligations.⁴

Both Cox and MCI claim that a de minimis threshold will allow LECs to cross-subsidize VDT offerings.⁵ MCI states that the Commission's cost allocation and reporting rules do not allow carriers to forego cost allocation practices because an amount is deemed too small.⁶ These petitioners' claims are without merit. It should be emphasized that the issue here is not whether to subject VDT to FCC accounting and cost

² 2d R&O at ¶ 1.

³ See Cox 5-8; MCI 2-6.

⁴ See 2d R&O at ¶ 35. Cox and MCI question the administrative savings gained from the Commission's decision establishing a threshold. Those parties ignore the work efforts in identifying and allocating VDT costs for the specific purpose of removal from sharing/low-end adjustment calculations, as well as the Commission's resources which will need to be expended to administer and monitor this process. Further, the petitioners inappropriately would subject all VDT projects to additional regulatory requirements, and discourage VDT testing and experimentation on a small scale. This is typical of cable operators' efforts to place asymmetrical regulatory burdens upon telephone companies. Curiously, at the same time cable interests are clamoring for VDT over-regulation in this and other matters, the Commission is proposing to waive rate regulation rules for cable operators in Dover Township, New Jersey, where Bell Atlantic plans to initiate commercial VDT service. See Waiver Of The Commission's Rules Regulating Rates For Cable Services, CUID Nos. NJ0213, NJ0160, Order Requesting Comments, released November 6, 1995. The Commission should strive for evenhanded treatment of competitive VDT and cable offerings.

⁵ Cox 5-6; MCI 1.

⁶ MCI 2.

allocation requirements. Indeed, the Commission has already promulgated detailed requirements in this area.⁷ The issue is at what VDT threshold the Commission will invoke its regulatory processes to calculate and remove VDT costs and revenues from sharing/low-end adjustment calculations.⁸

The Commission has ample support for its judgment that its limited resources need not and should not be consumed where VDT costs are too small to have a significant effect on the LEC's overall interstate earnings as computed for sharing and low-end adjustments.⁹ Notably, the VDT threshold is supported by FCC precedent concerning the rate of return buffer zone for triggering earnings refund obligations. Under previous rules, the Commission prescribed an enforcement buffer of 25 basis points above the authorized rate of return, such that earnings within the buffer were deemed not significant enough to trigger refund obligations.¹⁰ Indeed, prior to 1987 the FCC applied an enforcement buffer of 50 basis points.¹¹

The assertions by Cox and MCI regarding cross-subsidy raise no new issue to warrant reconsideration. The FCC has already made very clear that VDT rates must

⁷ See Telephone Company-Cable Television Cross-Ownership Rules, CC Docket No. 87-266, 10 FCC Rcd. 244 ("VDT Recon. Order"), ¶ 173 (1994); RAO Letter 25, 10 FCC Rcd. 6008 (1995)(CCB); Reporting Requirements On Video Dialtone Costs And Jurisdictional Separations For Local Exchange Carriers Offering Video Dialtone Services, DA 95-2036, AAD No. 95-59, Order released September 29, 1995 (CCB) ("AAD 95-59 Order").

⁸ See 2d R&O at ¶ 35; Docket 94-1 Third Further Notice Of Proposed Rulemaking released September 21, 1995, ¶¶ 39-40 & n. 86 ("The LECs' obligation to submit data pursuant to RAO Letter 25, however, is independent of any action the Commission may take concerning the establishment of a de minimis threshold for price cap purposes.")

⁹ See 2d R&O at ¶ 35.

¹⁰ See MCI Telecommunications Corp. v. FCC, Slip Opinion at p. 6 (D.C. Cir. Aug. 1, 1995) (discussing regulatory history of FCC rate of return prescriptions and refund rules).

¹¹ See id. at p. 4.

conform with the price cap new services test and thereby cover all VDT direct costs, which include all VDT incremental costs.¹² Indeed, by requiring that such VDT rates also cover allocated non-incremental costs, the FCC has more than ensured against cross-subsidy of VDT. As mentioned *infra*, the FCC has identified the tariff review process for individual LECs as the proper vehicle for entertaining claims that VDT rates are cross-subsidized. Overall, as the Commission previously found, the “existing rules adequately protect consumers against improper cross-subsidy and anti-competitive activity.”¹³

III. THERE ARE NO GROUNDS FOR FCC RECONSIDERATION REGARDING COST ALLOCATION RULES FOR VDT

Cox criticizes the FCC for “failure to address” the issue of allocating VDT/telephony common costs. According to Cox, the FCC has left the allocation of such costs “entirely to the discretion of the carrier.”¹⁴ Cox states that the Commission should amend Part 64 rules to include procedures for separating video costs from telephone costs, and should also amend Part 36 jurisdictional separation rules to properly cover VDT.¹⁵ Cox’s assertions are utterly without merit and show a misunderstanding of FCC rules and procedures. It bears emphasis that the FCC has previously rejected requests for adoption of VDT-specific accounting, cost allocation, separations and pricing rules.¹⁶

¹² VDT Recon. Order at ¶¶ 217-20.

¹³ VDT Recon. Order at ¶ 166.

¹⁴ Cox 3-4.

¹⁵ Cox 4.

¹⁶ VDT Recon. Order at ¶ 169.

With respect to the Commission's Part 64 rules (segregation of nonregulated from regulated costs), the Commission has already decided that the VDT services at issue are regulated.¹⁷ Therefore, those VDT services are not subject to Part 64.¹⁸ Also, the Commission has determined that any nonregulated services to be offered in conjunction with VDT are adequately covered by existing Part 64 rules.¹⁹

Regarding the Part 36 rules, Cox asserts that unless the separation of telephone and video costs takes place before the jurisdictional separations process (*i.e.*, under Part 64, as described above), then the intrastate jurisdiction will be unfairly burdened with VDT costs. Cox goes on to state that Part 36 rules require allocation of Cable and Wire Facilities ("C&WF") costs associated with VDT based upon conductor cross-section or bandwidth.²⁰

Cox's arguments for Part 36 changes are misplaced and provide no basis for reconsideration. In the VDT Recon. Order, the Commission held that VDT costs should be jurisdictionally separated based upon existing Part 36 rules; and directed the Common Carrier Bureau to monitor the impact of VDT on separations results and on intrastate local telephone rates, and report its findings periodically to the Commission. The Commission stated: "This course of action will provide us and state regulators with the practical experience and the data necessary to make appropriate decisions concerning the future of the Part 36 rules."²¹

¹⁷ See VDT Recon. Order at ¶¶ 25, 30-31, 95.

¹⁸ See VDT Recon. Order at ¶ 180; 47 C.F.R. Sections 64.901, 32.23.

¹⁹ VDT Recon. Order at ¶¶ 179-82.

²⁰ Cox 3-4.

²¹ VDT Recon. Order at ¶ 186.

Pursuant to this FCC direction, the Bureau's AAD 95-59 Order has required each LEC that has received Section 214 authorization to provide VDT, to include in its VDT ARMIS quarterly report "a detailed explanation of how it is applying the Part 36 rules to VDT costs and revenues."²² Furthermore, the Commission has announced its intention to open an inquiry proceeding focusing on the implications for the jurisdictional separations process of the introduction of new technologies, including broadband.²³

Cox's contentions on Part 36 requirements regarding C&WF costs are not only misplaced, but show a misunderstanding of the separations process. FCC Rule 36.153(a)(1)(i)(A) provides for attribution of C&WF costs to the various categories based on "number of pairs in use or reserved," i.e. actual use. NYNEX will provide an electrical path for each service connection, whether for VDT or telephony. The electrical equivalent of "pairs in use" in the integrated fiber/coaxial broadband network proposed by NYNEX is a service connection. Accordingly, NYNEX plans to allocate C&WF costs shared by VDT and telephony based upon relative number of service connections. NYNEX's approach to apportioning C&WF costs is reasonable and consistent with the Part 36 rules. On the other hand, the use of cross-section or bandwidth allocators, as urged by Cox, is not relevant in the fiber/coaxial network because all circuits are derived electronically by equipment at the end of each facility.

Further, Cox repeats its suggestion for a 50% fixed allocation factor to divide common costs between VDT and telephony.²⁴ The Commission should reject this

²² AAD 95-59 Order at ¶ 20.

²³ VDT Recon. Order at ¶ 190.

²⁴ Cox 4.

broadbrush position which would ignore LEC differences and arbitrarily penalize VDT.²⁵ Since carriers' VDT service features and network architectures will vary, carriers may properly utilize different cost allocation methodologies respecting VDT shared costs and overheads. Given this reasonable potential variation, the Commission has designated the tariff review process for individual LECs as the appropriate place to specifically address such matters.²⁶

Finally, with respect to the FCC's Part 69 rules (access charge cost allocations and rate structure), MCI reiterates its prior argument that a separate Part 69 element is required for VDT.²⁷ MCI's argument is baseless. In the VDT Recon. Order, the FCC held that VDT is part of switched access and rejected arguments for a separate VDT rate element.²⁸ The Commission also observed: "We view the price cap regulatory regime, and not the Part 36/Part 69 cost allocation scheme, as our primary means of protecting the telephone consumers of price cap LECs from unreasonably high rates."²⁹

IV. CONCLUSION

Cox and MCI have provided no basis for FCC reconsideration on either the video dialtone threshold for applying sharing/low end adjustment procedures, or the cost

²⁵ It will be interesting to see if Cox still endorses a 50% fixed allocation factor for common costs should it decide to provide telephony on an integrated basis with its cable facilities.

²⁶ See VDT Recon. Order at ¶ 214; Bell Atlantic Telephone Companies Transmittal Nos. 741, 786, Order released June 9, 1995 (CCB), ¶¶ 15-16; NYNEX VDT Section 214 Applications (Mass. & R.I.), W-P-C-6982-83, Order and Authorization released March 6, 1995, ¶¶ 68-69, 73, 80.

²⁷ MCI 6-8.

²⁸ VDT Recon. Order at ¶¶ 195-99.

²⁹ VDT Recon. Order at ¶ 166.

allocation rules involving video dialtone. Their petitions for reconsideration should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Bernadette Chawke, hereby certify that copies of the foregoing **OPPOSITION TO PETITIONS FOR RECONSIDERATION** were served on the parties listed below, this 11th day of December, 1995, by first class United States mail, postage prepaid.

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